



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,343	09/04/2001	Peter Angele	24741-1526	3363
26633	7590	11/25/2003	EXAMINER	
HELLER EHRMAN WHITE & MCAULIFFE LLP			NAFF, DAVID M	
1666 K STREET,NW			ART UNIT	
SUITE 300			PAPER NUMBER	
WASHINGTON, DC 20006			1651	

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/857,343

Applicant()

ANGELE ET AL.

Examiner

David M. Naff

Art Unit

1651

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): 112, first paragraph, rejection.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

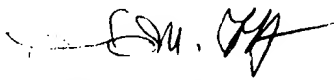
The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1-4, 6-13, 23, 25, 26, 32-34, 36 and 38.

Claim(s) objected to: _____.

Claim(s) rejected: 24, 35 and 37.Claim(s) withdrawn from consideration: 14-19 and 27-31.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


David M. Naff
Primary Examiner
Art Unit: 1651

ATTACHMENT TO FORM PTOL-303

The amendments to claims 24, 35 and 37 fail to overcome the 112, second paragraph rejection.

According to the specification at page 7, lines 13-24, a process as now required by amended claim 24 forms the porous composite matrix rather than the implant. Additionally, the process of amended claim 24 is incomplete by not requiring dissolving the pulverulent compound with the second solvent. If the pulverulent compound is not removed, the matrix will not be porous. The following amendments to claim 24 are suggested:

line 1, before "implant" insert --- porous composite matrix of the ---;

line 7, after the semicolon, cancel "and";

line 8, change the period to a semicolon, and after the semicolon insert --- and ---;

below line 8, insert ---

dissolving the pulverulent compound in the second solvent to obtain said porous composite matrix. ---.

Claim 35 is still confusing and unclear by requiring the tissue to be suitable for connective and supportive apparatus since it is uncertain as to structure that forms the apparatus. In view of the specification at page 12, lines 29-31, it appears differentiation produces a type of tissue rather than tissue for

Art Unit: 1651

an apparatus, and the tissue produced is suitable for use as connective and supportive tissue.

It is suggested that claim 35 be amended in line 2 by replacing "forming" with --- use as ---, and in line 3 by replacing "apparatus" with --- tissue ---. To be consistent, this same type of amendment should be made to claim 34 by in line 2 replacing "construction of a" with --- use as ---, and "apparatus" with --- tissue ---.

Reciting "further glycosaminoglycans" in claim 37 is confusing since this term is unclear whether these glycosaminoglycans differ from hyaluronic acid. If further glycosaminoglycans is intended not to be hyaluronic acid, then it is suggested claim 37 be amended as follows:

line 3, cancel "further";

line 4, before "and" insert --- other than hyaluronic acid ---, cancel "their", and before the period insert --- of the glycosaminoglycans other than hyaluronic acid ---.

To make the abstract more informative, the changes below are suggested:

line 1, cancel "The invention relates to", and change "a" to --- A ---;

line 2, before "formed" insert ---- is ---;

line 3, after the comma insert --- which are preferably in a weight ratio range of 30:70 to 99:1. A preferred hyaluronic acid derivative is an ester such as an ethyl or benzyl ester. The matrix is prepared by dissolving the hyaluronic acid derivative and hydrolyzed collagen in a first solvent, adding a pulverulent compound virtually insoluble in the first solvent, removing the first solvent, and dissolving the pulverulent compound in a second solvent. ---, and cancel "which" and insert --- The matrix ---.

Applicants may respond to this advisory action by filing an amendment, or by telephone authorizing the examiner to make the above changes by examiner's amendment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Naff whose telephone number is 703-308-0520. The examiner can normally be reached on Monday-Friday 9:30-6:00.

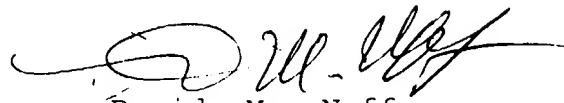
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 703-308-4743. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Application/Control Number: 09/857,343

Page 5

Art Unit: 1651

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

A handwritten signature in black ink, appearing to read 'D. M. Naff', with a stylized flourish extending to the right.

David M. Naff
Primary Examiner
Art Unit 1651

DMN

11/21/03